

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Court
Southern District of Texas
FILED
APR 11 2003

Michael N. Milby, Clerk

In Re Enron Corporation	§	MDL-1446
Securities, Derivative &	§	
"ERISA Litigation	§	
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MARK NEWBY, ET AL.	§	
Plaintiffs	§	
VS.	§	CIVIL ACTION NO. H-01-3624 ✓
	§	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
Defendants	§	
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DAVID A. HUETTNER, Individually and	§	
as Custodian of the David A. Huettner	§	
Individual Retirement Account; SUSAN B.	§	
HUETTNER; and Donald E. Huettner,	§	
Individually and as Custodian of the	§	
Donald E. Huettner Individual Retirement	§	
Account	§	
Plaintiffs	§	
VS.	§	CIVIL ACTION NO. H-02-2984
EOTT ENERGY PARTNERS, L.P.;	§	
EOTT ENERGY CORP.;	§	
KENNETH LAY;	§	
DANA R. GIBBS;	§	
STANLEY C. HORTON;	§	
MARY ELLEN COOMBE;	§	
DAVID R. HULTSMAN;	§	
LORI L. MADDOX;	§	
PEGGY B. MENCHACA;	§	
MOLLY M. SAMPLE;	§	
SUSAN C. RALPH;	§	
DANIEL P. WHITTY; and	§	
ARTHUR ANDERSEN, L.L.P.	§	

**CERTAIN INDIVIDUAL DEFENDANTS' REQUEST FOR RULING ON THEIR
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COME NOW, Defendants Dana R. Gibbs, Mary Ellen Coombe, David R.

Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph and

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Daniel P. Whitty (collectively referred to as "Certain Individual Defendants"), and file this, their Request for Ruling on their Motion to Dismiss for Failure to State a Claim, and in support thereof, would show as follows:

1. On September 22, 2002, Certain Individual Defendants, with EOTT Energy Partners, L.P., filed their Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue. That motion was supplemented on September 23, 2002, with the exhibits that inadvertently had not been attached to the Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue.

2. On October 22, 2002, EOTT Energy Partners, L.P. filed its Notice of Bankruptcy. Thereafter, on November 20, 2002, this Court ordered that Plaintiffs file a status report by February 7, 2003. Plaintiffs' Status Report advised the Court that Plaintiffs had filed a motion for relief from the automatic stay in the EOTT bankruptcy case, and that a hearing had been requested with respect to such motion. Subsequently, the Plaintiffs' Motion for Relief from the Automatic Stay was denied by the U.S. Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, Judge Richard S. Schmidt, presiding.

3. On February 18, 2003, Judge Schmidt of the U.S. Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, signed the Order Confirming Joint Chapter 11 Plan of the Debtors. Pursuant to that Order, the Plaintiffs were permanently enjoined from continuing the current action against EOTT Energy Partners, L.P. or EOTT Energy Corp. Instead, any claims by Plaintiffs against the EOTT Debtors are required to be administratively processed through the Bankruptcy Court.

However, the Certain Individual Defendants' Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue is ripe for disposition by this Court.

4. The Plaintiffs' claims against Certain Individual Defendants should be dismissed because: (1) Plaintiffs have failed to state a claim under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5; (2) Plaintiffs have failed to state a claim under Section 20(a) of the Securities Exchange Act of 1934; (3) Plaintiffs have failed to state a claim under either Sections 11 or 15 of the Securities Act of 1933; and (4) Plaintiffs have failed to state a claim for common law fraud or for breach of fiduciary duty. As a matter of law, Plaintiffs claims against Certain Individual Defendants Dana R. Gibbs, Mary Ellen Coombe, David R. Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph and Daniel P. Whitty should be dismissed. If the 12(b)(6) motion is granted, the venue motion is moot.

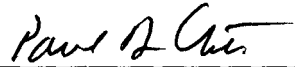
WHEREFORE, PREMISES CONSIDERED, Certain Individual Defendants Dana R. Gibbs, Mary Ellen Coombe, David R. Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph and Daniel P. Whitty request that the Court dismiss all claims against the Certain Individual Defendants.

However, the Certain Individual Defendants' Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue is ripe for disposition by this Court.

4. The Plaintiffs' claims against Certain Individual Defendants should be dismissed because: (1) Plaintiffs have failed to state a claim under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5; (2) Plaintiffs have failed to state a claim under Section 20(a) of the Securities Exchange Act of 1934; (3) Plaintiffs have failed to state a claim under either Sections 11 or 15 of the Securities Act of 1933; and (4) Plaintiffs have failed to state a claim for common law fraud or for breach of fiduciary duty. As a matter of law, Plaintiffs claims against Certain Individual Defendants Dana R. Gibbs, Mary Ellen Coombe, David R. Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph and Daniel P. Whitty should be dismissed. If the 12(b)(6) motion is granted, the venue motion is moot.

WHEREFORE, PREMISES CONSIDERED, Certain Individual Defendants Dana R. Gibbs, Mary Ellen Coombe, David R. Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph and Daniel P. Whitty request that the Court dismiss all claims against the Certain Individual Defendants. If, for any reason, the Court does not dismiss all claims against the Certain Individual Defendants, then the Certain Individual Defendants request that venue of the case be transferred to this Court.

Respectfully submitted,

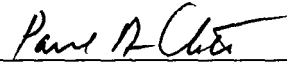


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record by facsimile, first class delivery, or by certified mail, return receipt requested, or by messenger delivery this 11 day of April, 2003.



PAUL D. CLOTE